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OFFICE OF PETITIONS

In re Application of
Muller et al.
Application No. 09/508,934
International Filing Date: September 17, 1998
For: STATOR WINDING METHOD FOR A
BRUSHLESS DIRECT-CURRENT MOTOR

: Decision on Petition for
: Patent Term Extension
:
:

The above-identified application has been forwarded to the undersigned for consideration on a petition for patent term adjustment entitled "Request for Reconsideration of Patent Term Extension Indicated in Notice of Allowance and Not Indicated in Supplemental Notice of Allowance." In the alternative, the petition is being treated as a petition for corrected patent term extension under 37 CFR 1.701 and 37 CFR 1.181. See 35 U.S.C. § 154(b)¹ and 37 CFR § 1.701.

The petition under 37 CFR 1.705 is dismissed.

The petition under 37 CFR 1.181 is dismissed.

Petitioner notes that the Supplemental Notice of Allowance mailed on December 21, 2004 for the above-identified application did not contain an indication of patent term extension under 35 U.S.C. § 154(b). Petitioner contends that "in accordance with 37 CFR 1.702(a)(4) "the term of an original patent shall be adjusted if issuance of the patent was delayed due to failure of the Office to issue a patent not later than four (4) months after the date on which the issue fee was paid under 35 U.S.C. § 151 and all outstanding requirements were satisfied. Petitioner contends that the issue fee was paid on June 11, 2004 and accordingly, a patent should have issued on October 11, 2004.

35 U.S.C. § 154(b)(as amended by the "Uruguay Round Agreements Act," enacted December 8, 1994, as part of Public Law 103-465) provides for patent term extension for appellate review, interference and secrecy order delays in applications filed on or after June 8, 1995 and before May 29, 2000.

¹35 U.S.C. § 154 was amended by the "American Inventors Protection Act of 1999," which was enacted on November 29, 1999 as part of Public Law 106-113 (Consolidated Appropriations Act for Fiscal Year 2000). Since this amendment is effective May 29, 2000 and applies to applications filed on or after that date, the prior patent term adjustment provisions of 35 U.S.C. § 154 continue to apply to the above-identified application.

35 U.S.C. § 154(b)(as amended by the “American Inventors Protection Act of 1999,” enacted November 29, 1999, as part of Public Law 106-113) provides for patent term adjustment for these administrative delays and others in applications filed on or after May 29, 2000.

Petitioner styles the instant petition as a petition for patent term extension, however, petitioner argues for patent term adjustment under the provisions of 37 CFR 1.702. Petitioner argues that he is entitled to patent term adjustment based on 37 CFR 1.702(a)(4), 37 CFR 1.702 is a patent term adjustment provision for applications filed on or after May 29, 2000. The above-identified application was filed on September 17, 1998, which is before May 29, 2000 and, as a result, is entitled to patent term extension based upon the conditions in 35 U.S.C. § 154(b), in effect on June 8, 1995. The patent term adjustment provisions of 35 U.S.C. § 154(b) in effect on May 29, 2000 do not apply, because the amended version of 35 U.S.C. § 154(b) only applies to applications filed on or after May 29, 2000. Pursuant to 35 U.S.C. § 154(b), in effect on June 8, 1995, the application is not entitled to patent term extension under 37 CFR 1.701, as there was not a successful appeal, interference or a secrecy order. The Office has no authority to grant an extension of the term due to administrative delays except as authorized by 35 U.S.C. § 154.

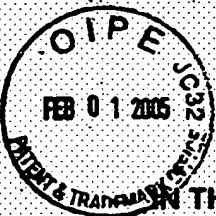
After mailing of this decision, the above-identified application will be forwarded to the Office of Publications.

The rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require payment of a fee on filing each petition. *See* 35 U.S.C. § 41(a)(7). Accordingly, as authorized the required \$200 fee for the petition under 37 CFR 1.705(b) has been charged to Petitioner’s Deposit Account (06-0308). The petition fee under 37 CFR 1.182 for questions not specifically provided for has not been charged to Petitioner’s deposit account.

Telephone inquiries with regard to this communication should be directed to Mark O. Polutta at (571) 272-7709.



Mark O. Polutta
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy



B/JFW

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:) Examiner: A.D. Tugbang
MÜLLER, et al.)
Serial No.: 09/508,934) Art Unit: 3729
Filed: June 2, 2000) Confirmation No.: 4918
For: STATOR AND STATOR)
WINDING METHOD FOR USE)
WITH BRUSHLESS DIRECT)
CURRENT MOTORS)
Date of Last Office Action:)
November 19, 2003)
Attorney Docket No.:)
TRWZ 2 00256)
Cleveland, Ohio 44114-2518

REQUEST FOR RECONSIDERATION OF PATENT TERM EXTENSION
INDICATED IN NOTICE OF ALLOWANCE AND NOT
INDICATED IN SUPPLEMENTAL NOTICE OF ALLOWANCE

Mail Stop Issue Fee
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

- 1) This is a request for reconsideration of the Patent Term Extension initially indicated in the Notice of Allowance mailed on April 13, 2004 in view of the Supplemental Notice of Allowance mailed on December 21, 2004.
- 2) The issue fee was paid on June 11, 2004 in response to the initial Notice of Allowance mailed on April 13, 2004.
- 3) The Supplemental Notice of Allowance mailed on December 21, 2004, however, does not contain any indication of a Patent Term Extension under 35 U.S.C. § 154(b).
- 4) In accordance with 37 C.F.R. § 702(a)(4) the term of an original patent shall be adjusted if the issuance of the patent was delayed due to failure of the Office to issue a patent not later than four (4) months after

the date on which the issue fee was paid under 35 U.S.C. § 151 and all outstanding requirements were satisfied.

- 5) The issue fee was paid on June 11, 2004 and, accordingly, a patent should have issued on October 11, 2004.
- 6) Any patent granted on this application is not subject to a terminal disclaimer.
- 7) As to circumstances during the prosecution of this application constituting a failure to engage in reasonable efforts to conclude processing or examination of this application as set forth in 37 C.F.R. § 704, there were none.
- 8) No fee is believed to be due. However, if any fee is necessary, authorization is hereby made to charge the amount of \$200 to Deposit Account No. 06-0308.
- 9) Further authorization is hereby made to charge any additional fees required by this paper or credit any overpayment in the manner authorized above.

A duplicate of this paper is attached.

Respectfully submitted,

FAY, SHARPE, FAGAN,
MINNICH & McKEE, LLP


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Certificate of Mailing

I certify that this paper and accompanying document(s) are being

- deposited with the United States Postal Service as First Class mail under 37 C.F.R. 1.8, addressed to: MAIL STOP Issue Fee, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date indicated below.
- transmitted to facsimile number (703) 872-8302 under 37 C.F.R. 1.8 on the date indicated below.
- deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. 1.10 on the date indicated below and is addressed to: MAIL STOP AMENDMENT FEE, Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Express Mail Label No.:	Signature
	
Date	Printed Name
January 28, 2005	Barbara Brazier